

ENDORSED
FILED
ALAMEDA COUNTY

APR 17 2019

CLERK OF THE SUPERIOR COURT
By *Jayana Turner* Deputy

1 Rachel S. Doughty (State Bar No. 255904)
2 Jessica L. Blome (State Bar No. 314898)
3 GREENFIRE LAW, PC
4 2550 Ninth Street, Suite 204B
5 Berkeley, CA 94710
(510) 900-9502
Fax: (510) 900-9502
rdoughty@greenfirelaw.com
jblome@greenfirelaw.com

6 *Attorneys for Plaintiff*

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF ALAMEDA

9 AS YOU SOW, a 501(c)(3) non-profit
10 corporation,

11 Plaintiff,

12 v.

13
14 AMAZON.COM, INC.,

15 Defendant.
16
17
18
19
20
21
22
23
24
25
26
27
28

Case No. RC19015279

**COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES**

(Health & Saf. Code, § 25249.6 et seq.)

1 Plaintiff AS YOU SOW brings this action as a representative in the public interest to protect
2 the citizens of the State of California from unknowingly exposing themselves to toxic mercury or
3 mercury compounds added as active ingredients in skin lightening creams marketed, distributed, and
4 sold to Californians through the website www.amazon.com. By this Complaint, plaintiff AS YOU
5 SOW seeks an order enjoining defendant AMAZON.COM, INC. to either (1) prevent third parties
6 from selling skin lightening products that contain mercury or mercury compounds to California
7 consumers on www.amazon.com or (2) comply with Proposition 65's warning requirement by
8 providing a clear and reasonable warning to California customers prior to their purchase of skin
9 lightening products that contain mercury or mercury compounds on www.amazon.com. Plaintiff also
10 seeks civil penalties as provided for under Proposition 65 and other appropriate relief.

11 **Venue And Jurisdiction**

12 1. This Court has jurisdiction over this action pursuant to Health and Safety Code section
13 25249.7, which allows enforcement of Proposition 65 in any court of competent jurisdiction, and
14 pursuant to California Constitution, article VI, section 10, because this case does not present a cause
15 given by statute to other trial courts.

16 2. This court has jurisdiction over defendant because it has sufficient minimum contacts
17 in the State of California, and/or otherwise purposefully avails itself of the California market.

18 3. Plaintiff has met the statutory requirements for notice to bring this citizen suit
19 enforcement action under Health and Safety Code section 25249.7 and its implementing regulations.

20 4. Venue is proper in the Superior Court of California, Alameda County, pursuant to
21 Code of Civil Procedure sections 393 and 395, because this court is a court of competent jurisdiction,
22 because plaintiff seeks civil penalties against defendant, because one or more instances of wrongful
23 conduct occurred and continue to occur in Alameda County, and/or because defendant conducted and
24 continues to conduct business in this county with respect to the consumer products at issue in this
25 case.

Parties

1
2 5. Plaintiff AS YOU SOW is a 501(c)(3) non-profit corporation dedicated to, among
3 other causes, the protection of the environment, toxics reduction, the promotion and improvement of
4 human health, and the improvement of worker and consumer rights. AS YOU SOW has, since 1992,
5 been one of the leading enforcers of Proposition 65, bringing hundreds of manufacturers and whole
6 industries into compliance as part of its work to promote corporate accountability, ensure safer
7 consumer products, and create a sustainable marketplace that does not degrade the planet. AS YOU
8 SOW brings this action as a private attorney general in the public interest pursuant to Health & Safety
9 Code section 25249.7, subdivision (d).

10 6. Defendant AMAZON.COM, INC. is a business entity with ten or more employees
11 doing business within the scope of Proposition 65. (Health & Saf. Code, § 25249.11.)

Statutory And Regulatory Background

12
13 7. Overwhelmingly enacted by the voters of California in 1986 as “Proposition 65,” the
14 Safe Drinking Water and Toxic Enforcement Act “is a remedial statute intended to protect the public.”
15 (*People ex rel. Lungren v. Superior Court* (1996) 14 Cal. 4th 294, 314.)

16 8. Proposition 65 declared the People’s right to be “informed about exposures to
17 chemicals that cause cancer, birth defects, or other reproductive harm.” (Health & Saf. Code Div. 20,
18 Ch. 6.6 Note, § 1, subd. (b).)

19 9. Under Proposition 65:

20 No person in the course of doing business shall knowingly and intentionally expose
21 any individual to a chemical known to the state to cause cancer or reproductive
22 toxicity without first giving clear and reasonable warning to such individual, except
as provided in section 25249.10.

23 (Health & Saf. Code, § 25249.6.)

24 10. A “person in the course of doing business” does not include any person employing
25 fewer than 10 employees in his or her business; any city, county, or district or any department or
26 agency thereof or the state or any department or agency thereof or the federal government or any

1 department or agency thereof; or any entity in its operation of a public water system as defined in
2 Section 116275. (Health & Saf. Code, § 25249.11, subd. (b).)
3 (27 Cal. Code Regs., § 25102, subd. (n).)

4 11. An exposure to a listed chemical contained in a consumer product “results from a
5 person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a
6 consumer good, or any exposure that results from receiving a consumer service.” (27 Cal. Code Regs.,
7 § 25602 subd. (b).)

8 12. A “knowing” exposure occurs where the party responsible for such exposure has:

9 Knowledge of the fact that a discharge of, release of, or exposure to a chemical listed
10 pursuant to Section 25249.8(a) of the Act is occurring. No knowledge that the
discharge, release or exposure is unlawful is required.

11 (27 Cal. Code Regs., § 25102, subd. (n).)

12 13. According to the Office of Environmental Health Hazard Assessment (OEHHA), a
13 warning meets the “clear and reasonable” requirements of Proposition 65 only if it includes: (1) a
14 symbol consisting of a black exclamation point in a yellow equilateral triangle; (2) the word
15 “WARNING:” in all capital letters and bold print; and (3) the words, “This product can expose you to
16 chemicals including [name of one or more chemicals], which is [are] known to the State of California
17 to cause [cancer, birth defects or other reproductive harm or cancer and birth defects or other
18 reproductive harm].” (27 Cal. Code Regs., § 25603, subd. (a).)

19 14. For internet purchases, the warning may be provided by including a clearly marked
20 hyperlink using the word “WARNING” on the product display page, or by “otherwise prominently
21 displaying the warning to the purchaser prior to completing the purchase.” (27 Cal. Code Regs., §
22 25602, subd. (b).) “For purposes of this subarticle, a warning is not prominently displayed if the
23 purchaser must search for it in the general content of the website.” (Id.)

24 15. Where a sign or label used to provide consumer information about a product is in a
25 language other than English, “the warning must also be provided in that language in addition to
26 English.” (27 Cal. Code Regs., § 25602, subd. (d).)

1 16. Through its strong notice provisions, Proposition 65 helps to protect California's
2 drinking water sources from contamination; allows consumers to make informed choices about the
3 products they buy; and gives Californians the tools they need to protect themselves from exposure to
4 toxic chemicals.

5 17. Proposition 65 provides that any person who "violates or threatens to violate" the
6 statute may be enjoined in any court of competent jurisdiction. (Health & Saf. Code, § 25249.7.)
7 "Threaten to violate" is defined to mean "to create a condition in which there is a substantial
8 probability that a violation will occur." (Id. at § 25249.11, subd. (e).)

9 18. In addition, any person who violates Proposition 65 is liable for civil penalties up to
10 \$2,500 per day per violation, recoverable in a civil action. (Health & Saf. Code, § 25249.7, subd. (b).)

11 19. Private parties are entitled to bring an action in the public interest to enforce
12 Proposition 65 under Health and Safety Code, section 25249.7, subdivision (d).

13 **General Allegations of Fact**

14 **A. Defendant operates the Amazon Marketplace at www.amazon.com in the course of doing**
15 **business.**

16 20. Defendant is a "person," as that term is defined at Health and Safety Code section
17 25249.11, subdivision (a).

18 21. Defendant owns and operates the Amazon Marketplace, which is located at the website
19 www.amazon.com.

20 22. The Amazon Marketplace is an online platform that facilitates the sale of products by
21 third parties to end-users or online customers. In 2018, third party sales accounted for fifty percent—
22 or \$150 billion—of the total value of products sold on the Amazon Marketplace worldwide.

23 23. Valued at more than \$950 billion in market capital, defendant is one of the largest
24 companies in the world with market presence on multiple continents, including Asia, Europe, and the
25 Americas.

26 24. To sell a product through the Amazon Marketplace, third party sellers must set up an
27 account on www.amazon.com, so they can create a product description page that lists their products
28

1 for sale at www.amazon.com. A product description page is a unique page on the Amazon website
2 which corresponds to a single unique product on which there is information about that product and
3 from which a customer can elect to buy that product and begin the checkout process to buy that
4 product.

5 25. An Amazon Standard Identification Number, or ASIN, is an internal, unique
6 alphanumeric code that corresponds to each product listed on the Amazon Marketplace.

7 26. A seller obtains an ASIN by creating a new product listing through the tools that
8 defendant provides in a portal called "Seller Central."

9 27. Defendant does not prevent a third party from selling multiple units of a single skin
10 lightening product under multiple ASINs or from reselling a product purchased at www.amazon.com
11 under a different ASIN.

12 28. Defendant actively recruits third parties to use the Amazon Marketplace to sell
13 products to defendant's customers on defendant's websites under defendant's banner.

14 29. In the course of operating the Amazon Marketplace, defendant provides some level of
15 business service for each product sold through its website, including the skin lightening products at
16 issue in this case.

17 30. In exchange for the following services, defendant earns fixed fees, a percentage of
18 sales, per-unit activity fees, interest, or some combination thereof from each of the approximately 2.5
19 million third party sellers utilizing the Amazon Marketplace:

- 20 • Defendant assists third parties with the creation of product listings;
- 21 • Defendant advertises and markets products at www.amazon.com that are sold by third
22 parties alongside products that defendant is selling as a retailer;
- 23 • Defendant processes customer payments for third party sales. Defendant—not the third
24 party seller—appears as the seller on customers' credit card statements;
- 25 • Defendant provides warehousing and shipping fulfillment services for third parties;
- 26 • Through its A-to-Z Money-Back Guarantee, defendant will reimburse buyers for
27 payments if they are dissatisfied with a product purchased at www.amazon.com; and
28

1 • Defendant manages its branded communication platform through which substantially
2 all communication between defendant's customers and third party sellers must occur.

3 31. Defendant earns fees for services, even if the products sold were illegal or counterfeit.

4 32. Defendant has a reputation for low prices, fast delivery, and variety—a reputation it
5 shares with the third party sellers it recruits to its site. Defendant's reputation would not be possible
6 without the millions of products made available to defendant's customers through third-parties at
7 www.amazon.com. Indeed, individuals and businesses of all sizes can reach hundreds of millions of
8 customers instantly when they sell their products at www.amazon.com through the Marketplace.

9 33. Every third party seller has the option to make its products available to customers in
10 multiple countries at one time with a single mouse click. In so doing, defendant creates value for third
11 party sellers by enabling them to access the Amazon Marketplace, a multi-billion-dollar business
12 asset.

13 34. Third party sellers would not have the ability to reach defendant's millions of
14 customers, including those in California, without access to the Amazon Marketplace, and defendant
15 would not have as many business opportunities or as high profit margins absent its partnership with
16 third party sellers.

17 35. Defendant does not require third party sellers, distributors, manufacturers, or suppliers
18 to disclose the number of employees they have, so defendant does not know whether third party
19 sellers, distributors, manufacturers, or suppliers have 10 or more employees.

20 36. Defendant does not give customers access to the legal name, physical address, or
21 contact information for third party sellers through the Amazon Marketplace. In fact, sometimes
22 defendant does not know the legal names or physical addresses of its third party sellers.

23 37. Defendant operates the Amazon Marketplace at www.amazon.com in the course of
24 doing business.

25 **B. Exposure to mercury or mercury compounds is reasonably foreseeable.**

26 38. On July 1, 1990, OEHHA identified and listed "mercury and mercury compounds" as
27 chemicals known to the State of California to cause developmental toxicity, pursuant to Proposition
28

1 65. Mercury and mercury compounds became subject to Proposition 65's "clear and reasonable
2 warning" requirement one year later on July 1, 1991. (Health & Saf. Code, §§ 25249.8, 25249.10,
3 subd. (b); 27 Cal. Code Regs., § 27001, subd. (c).)

4 39. Mercury is broadly known to be an intentionally added ingredient in products claiming
5 skin lightening qualities.

6 40. Mercury is an effective skin lightener because it penetrates deep into the skin where it
7 interacts with cells known as melanocytes, which produce the pigment known as melanin, a chemical
8 that darkens the skin. Mercury replaces a critical enzyme in melanocyte cells, which shuts off the
9 production of melanin and causes the skin to lighten. Mercury is also a well-known, effective anti-
10 bacterial for the treatment of acne.

11 41. Generally, mercury exists in three forms: elemental mercury, inorganic mercury
12 compounds, and organic mercury. Mercury is toxic to humans in all forms. The most commonly used
13 active ingredient in skin lightening creams is inorganic mercury because it can be absorbed into the
14 cream readily and easily.

15 42. Californians acquire, purchase, store, consume, use, and/or dispose of skin lightening
16 creams containing mercury from third party sellers who operate product pages at www.amazon.com.

17 43. Reasonably foreseeable use of skin lightening creams containing mercury causes those
18 Californians and their household members to be exposed to mercury and mercury compounds in three
19 main routes: ingestion, inhalation, or dermal absorption.

20 44. Ingestion occurs post-application as a result of normal hand-to-mouth behavior, such as
21 eating or preparing food.

22 45. Inhalation occurs when mercury vapor off-gasses from the creams.

23 46. Dermal absorption occurs with each reasonably foreseeable application of a skin
24 lightening cream to the user's skin. Skin lightening creams that contain mercury are designed and
25 specifically marketed for direct contact with skin.

1 47. Exposure to a cream user's household members is foreseeable because use of the
2 product results in contamination of household air and surfaces, and household members come into
3 direct contact with the skin of the primary user of the cream.

4 48. Because Californians purchase skin lightening creams containing mercury through the
5 Amazon Marketplace throughout California, exposures to mercury occur and continue to occur in
6 residences where the products are used and in locations in which the products are disposed, including
7 on property not owned or controlled by defendant.

8 49. Each reasonably foreseeable use of skin lightening creams containing mercury—
9 whether by ingestion, inhalation, or dermal absorption—results in continuing and ongoing exposure to
10 mercury or mercury compounds because mercury has a half-life in the body of two months.

11 50. Since 1973, the Food and Drug Administration has warned against the use of mercury
12 in cosmetics, due to ease of exposure and bioaccumulation:

13 It is well known that mercury compounds are readily absorbed through the unbroken
14 skin as well as through the lungs by inhalation and by intestinal absorption after
15 ingestion. Mercury is absorbed from topical application and is accumulated in the
16 body, giving rise to numerous adverse effects. ... Cosmetic preparations containing
17 mercury compounds are often applied with regularity and frequency for prolonged
18 periods. Such chronic use of mercury-containing skin-bleaching preparations has
19 resulted in the accumulation of mercury in the body and the occurrence of severe
20 reactions.

21 (21 C.F.R. § 700.13(b).)

22 51. The California Department of Public Health recommends that when someone has a
23 skin lightening cream they believe contains mercury, that person should immediately dispose of the
24 cream at a household hazardous waste facility.

25 **C. Defendant knowingly and intentionally exposed and continues to expose Californians to**
26 **skin lightening creams that contain mercury or mercury compounds.**

27 52. Beginning at least in 2014 and continuing to present, defendant has permitted third
28 parties' access to its online marketplace in order to sell skin lightening, whitening, and "smoothing"
creams containing mercury or mercury compounds, and specifically those listed below in Table 1.

Table 1: Noticed Consumer Products

PRODUCTS	Exemplars
Goree brand skin lightening and whitening creams	Goree Day & Night Whitening Cream (ASIN B074DVQ78J) Goree Day And Night Cream Dark Circles, SPOTS PIMPLES REMOVING 30g x 1 (ASIN B01JGW2Q8Q) Goree 12 Box*30G : 30G, 12Box Day And Night Cream (ASIN B071F5W69M) 12 Box*30G : Day And Night Cream 30G (ASIN B07286YNF6) Goree Day & Night Cream with Goree Cream Combo (ASIN B07FCGTVW1)
Jiaoyan brand skin lightening and whitening creams	Jiaoyan Whitening Skin Care Set (ASIN B01MZDMSDJ)
Be Be brand skin lightening and whitening creams (including anti-freckle and blemish creams)	Be Be Special Cream Round-Yellow (Anti-Freckle, Blemish) (ASIN B075J67ZY9)
CCM brand skin lightening and whitening creams (including anti-freckle and blemish creams)	CCM Perfect 365 Special White Cream (ASIN B00T41L3CU) CCM Anti Freckle & Blemish – Night Cream (ASIN B00P0QXX3A)
Parley brand whitening creams	Parley Herbal Whitening Cream – 100% Natural (ASIN B019C5HKW4)
Polla brand skin lightening and whitening creams (including anti-melasma, acne, and dark spot creams)	X2 PCS SET Polla Anti-melasma, Acne, Dark Spot, Whitening Day & Night Creams 5g (ASIN B0793CZQQZ) Polla Anti-Melasma, Acne, Dark Spot, Whitening Day and Night Cream (ASIN B00B9XBNJE)
KIM brand skin lightening, whitening, and smoothing creams (including anti-wrinkle, anti-acne, anti-freckle and Latinal/Latina creams)	Whitening Ginseng and Pearl Snow Lotus Latinal Smoother Face Cream [USA] (ASIN B00N526M70) KIM Whitening Ginseng Pearl & Snow Lotus Latinal Smoother Face Cream 20g (ASIN B00XW3XA36) Whitening Ginseng Pearl Snow Lotus Latinal Face Cream Anti Wrinkle Acne Freckle 20g (ASIN B00BQGURJG) Whitening Pearl + Aloe + Collagen + Snow Lotus Latinal Smoother Face Cream 20g [USA] (ASIN B00CMJVZ3S)

	1 x Kim Herbal Whitening Turmeric and Snowlotus Herbal Anti-Wrinkle Cream 20g (ASIN B07GTJ78JJ)
Chandni skin lightening and whitening creams	Chandni Whitening Cream (ASIN B074MGFGMF) Chandni Whitening Cream Remove Acne, Wrinkles, Pimples, Dark Spot, Dark Circles (ASIN B072BCBZP3) CHANDNI BEAUTY CREAM 30g (ASIN B07FR916GS) Chandni Whitening Cream (ASIN B074T57XDV)

53. The consumer products listed in Table 1, including those branded as Goree, Jiaoyan, Be Be Special, CCM, Parley, Polla, and KIM, contain mercury or mercury compounds.¹ These skin lightening products will be referred to collectively as “PRODUCT(s)” throughout this Complaint.

54. The European Commission’s Rapid Alert System periodically publishes notices related to the high mercury content of skin lightening creams, including for Goree Day & Night Whitening Cream in 2013.

55. Defendant’s Worldwide Product Compliance and Safety Team regularly reviews and takes action in relation to health alerts issued by the European Commission’s Rapid Alert System.

56. According to public health experts, skin whitening cosmetic products likely contain mercury if (1) the product packaging is in a foreign language and does not contain an ingredient label; (2) the product is manufactured in Pakistan; (3) the product claims to whiten or bleach the skin. If these three factors are present, defendant should either prohibit the sale of the product, require a Proposition 65 warning regarding the mercury content of the product, or test the product to confirm the presence or absence of mercury in the product line.

57. Since 2014 and continuing to present, multiple health and safety agencies across the globe issued health alerts, announced investigations into, and advised consumers to beware of skin

¹ The exemplars listed in Table 1 are provided to assist in identification only and are not exhaustive of possible name variations and Amazon Standard Identification Numbers (ASINs) under which the PRODUCTS are or may be listed at www.amazon.com.

lightening products, including the PRODUCTS because they contain dangerously high levels of mercury or mercury compounds.

58. On August 25, 2014, Larry Lee filed a citizen suit enforcement action against AMAZON, alleging it had violated Proposition 65's warning requirement by failing to provide a clear and reasonable warning to California consumers who purchased skin whitening creams that contain mercury or mercury compounds at www.amazon.com. (*Larry Lee v. Amazon.com, Inc.* (Ala. Cty Sup. Ct. 2014) Case No. RG14-738130 [hereinafter the "Lee Litigation."]²)

59. During the course of discovery phase of the Lee Litigation, Mr. Lee disclosed the following analytical laboratory test results showing high levels of mercury or mercury compounds in skin lightening products, including the following PRODUCTS at issue in this case. Notwithstanding these disclosures, the PRODUCTS remained available for purchase through www.amazon.com without a Proposition 65 warning on the date indicated:

Table 2: Lee Litigation Disclosures to Amazon.com, Inc.

PRODUCTS	Highest Mercury Content Detected by Laboratory	Disclosure Date	Most Recent Unwarned Post to www.amazon.com as of this Filing
Goree	23,000 ppm mercury	March 8, 2018	Feb. 25, 2019
Jiaoyan	1,300 ppm mercury	March 8, 2018	Sept. 2, 2017
Be Be Special	2,700 ppm mercury	March 8, 2018	March 18, 2019
CCM	1,800 ppm mercury	March 8, 2018	Feb. 4, 2019
Parley	38,000 ppm mercury	March 8, 2018	Dec. 7, 2018
Polla	7,100 ppm mercury	March 8, 2018	Aug. 13, 2018
KIM	7,800 ppm mercury	March 8, 2018	Feb. 13, 2019
Chandi	23,000 ppm mercury	Nov. 21, 2018	April 1, 2019

60. On November 15, 2018, the Mercury Policy Project, along with fifty-one national and international non-government organizations with missions related to the protection of the environment and public health, called on defendant's Chief Executive Officer Jeff Bezos to end Amazon's business

² Mr. Lee amended his Complaint to narrow the Lee Litigation to skin lightening creams not at issue in this case. The Lee Litigation is pending, as the parties await the court's final decision.

1 practice of providing third parties access to www.amazon.com to sell dangerous skin lightening
2 creams containing mercury to defendant's millions of unsuspecting customers around the world. In its
3 letter, the Mercury Policy Project provided test results showing high mercury content of the
4 PRODUCTS and other skin lightening creams, photographs of product packaging, country of origin
5 information, and representative web addresses for each product's listing page on www.amazon.com to
6 demonstrate its availability on www.amazon.com.

7 61. On November 21, 2018, plaintiff sent its sixty-day Notice of Violation (NOTICE) to
8 defendant and to each of those public enforcement agencies to which Proposition 65 requires notice.
9 Plaintiff included the PRODUCTS in the NOTICE, along with the additional information referenced
10 in Section D *infra*.

11 62. During the January 2019 trial in the Lee Litigation, plaintiff presented evidence that the
12 PRODUCTS contain mercury or mercury compounds and were still available for purchase at
13 www.amazon.com after defendant knew the PRODUCTS contained mercury.

14 63. Since at least 2014, despite its knowledge that skin whitening creams may contain
15 mercury or mercury compounds, defendant has permitted and continues to permit third party sellers
16 access to the Amazon Marketplace to sell skin lightening creams that it knows contain toxic amounts
17 of mercury to California consumers.

18 **D. Defendant has exposed Californians to mercury and mercury compounds without**
19 **providing a clear and reasonable warning to consumers.**

20 64. Even for certain products where defendant posts a Proposition 65 warning, that
21 warning is not prominently displayed on the product description page and may not be displayed at all
22 to a purchaser prior to completing the purchase.

23 65. Even for certain products where defendant has posted a Proposition 65 warning,
24 defendant's customers can purchase the PRODUCTS without ever seeing the Proposition 65 warning
25 because it is buried within the general content of the website.

26 66. Defendant has never provided a Proposition 65 warning in the language used in the
27 consumer information about the PRODUCTS on the product description page on www.amazon.com.
28

1 **E. Notice of Violation**

2 67. A true and correct copy of plaintiff's sixty-day NOTICE, dated November 21, 2018, is
3 attached as Exhibit 1 to this Complaint.

4 68. In the NOTICE, plaintiff warned defendant that, as a result of defendant's sales of the
5 PRODUCTS, purchasers and users in the State of California were being exposed to mercury resulting
6 from their reasonably foreseeable use of these PRODUCTS, without the individual purchasers and
7 users first having been provided with a "clear and reasonable warning" regarding such toxic
8 exposures, as required by Proposition 65.

9 69. The NOTICE included, *inter alia*, the following information: the name, address, and
10 telephone number of the noticing individual; the name of the alleged violator; the statute violated; the
11 approximate time-period during which violations occurred; and descriptions of the violations,
12 including the chemical involved, the routes of toxic exposure, the type of products causing the
13 violations ("skin lightening, whitening, and 'smoothing' creams containing mercury or mercury
14 compounds"), and exemplars of the products (identified in Table 1 herein). Defendant and the
15 California Attorney General were provided copies of the 60-day Notice by mail. Additionally,
16 defendant was provided with a copy of a document entitled "The Safe Drinking Water and Toxic
17 Enforcement Act of 1986 (Proposition 65): A Summary," which is also known as Appendix A to title
18 27 of California Code of Regulations section 25093.

19 70. The NOTICE included a certificate of merit, executed by plaintiff's attorney stating
20 that the person executing the certificate had consulted with one or more persons with relevant and
21 appropriate experience or expertise who has reviewed the facts, studies or other data regarding
22 exposure to the listed chemical that is the subject of the notice, and that, based on that information, the
23 person executing the certificate believes there is a reasonable and meritorious case for this private
24 action. Factual information sufficient to establish the basis of the certificate of merit was attached to
25 the certificate of merit served on the California Attorney General.

71. No public prosecutor has commenced and is diligently prosecuting an action against the violations at issue herein, although the notice period provided in Health and Safety Code section 25249.7 has elapsed.

First Cause Of Action

(Violation of Health & Saf. Code, § 25249.6)

72. Plaintiff realleges and incorporates each and every allegation contained in the preceding paragraphs as though fully set forth herein.

73. Under Proposition 65:

No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual, except as provided in section 25249.10.

(Health & Saf. Code, § 25249.6.)

74. Mercury and mercury compounds are present in the PRODUCTS in such a way as to expose individuals in California to mercury and mercury compounds.

75. The PRODUCTS distributed, sold, or offered for sale in California require a “clear and reasonable warning” under Proposition 65.

76. Defendant has known and currently knows that the PRODUCTS contain mercury or mercury compounds.

77. Consumers are not provided with a clear and reasonable warning prior to purchase of the PRODUCTS.

78. In the course of its business, Defendant makes possible and intends for third parties to sell the PRODUCTS to California consumers.

79. Defendant, in the course of doing business in California, has violated Health and Safety Code section 25249.6 by knowingly and intentionally exposing California consumers to mercury or mercury compounds without first giving clear and reasonable warning to such individuals who were or who would become exposed to mercury or mercury compounds through dermal contact, ingestion, and/or inhalation during the reasonably foreseeable uses of the PRODUCTS.

80. Defendant has caused Californians to be exposed to a listed chemical in violation of Proposition 65, whether such exposure is classified as a consumer exposure, environmental exposure, none of the above, all of the above, some of the above, or otherwise.

81. Under Health and Safety Code section 25249.7, subdivision (b), this Court has authority to assess against defendant a maximum civil penalty of \$2,500 per day for each violation of Proposition 65 that has occurred and continues to occur.

82. Under Health and Safety Code section 25249.7, subdivision (a) this Court is authorized to enjoin defendant to comply with Proposition 65 now and at all times in the future.

Second Cause of Action

(Violation of 27 Cal. Code Regs., § 25603, subd. (a))

83. Plaintiff realleges and incorporates each and every allegation contained in the preceding paragraphs as though fully set forth herein.

84. According to the Office of Environmental Health Hazard Assessment's (OEHHHA), a warning meets the requirements of Proposition 65 only if it includes (1) a symbol consisting of a black exclamation point in a yellow equilateral triangle; (2) the word "WARNING:" in all capital letters and bold print; and (3) the words, "This product can expose you to chemicals including [name of one or more chemicals], which is [are] known to the State of California to cause [cancer, birth defects or other reproductive harm or cancer and birth defects or other reproductive harm]." (27 Cal. Code Regs., § 25603, subd. (a).)

85. For internet purchases, Proposition 65 warning may consist of a clearly marked hyperlink using the word “**WARNING**” on the product display page, or by “otherwise prominently displaying the warning to the purchaser prior to completing the purchase.” (27 Cal. Code Regs., § 25602, subd. (b).) “For purposes of this subarticle, a warning is not prominently displayed if the purchaser must search for it in the general content of the website.” (Id.)

86. Even for certain products where defendant posts a Proposition 65 warning, defendant has violated and continues to violate 27 Cal. Code Regs., § 25603, subd. (a) because that warning is

1 not prominently displayed on the product description page and may not be displayed at all to a
2 purchaser prior to completing the purchase.

3 87. Even for certain products where defendant has posted a Proposition 65 warning,
4 defendant has violated and continues to violate 27 Cal. Code Regs., § 25603, subd. (a) because
5 defendant's customers can purchase the PRODUCTS without ever seeing the Proposition 65 warning
6 because it is buried within the general content of the website.

7 88. To date, defendant has failed and continues to fail to provide a clear and reasonable
8 warning as required by Health and Safety Code section 25249.6 to users of the PRODUCTS.

9 89. As a direct result of defendant's acts and omissions, the general public in California
10 has been regularly, unlawfully, and involuntarily exposed to mercury and mercury compounds, which
11 are known to the State of California to be developmental toxins.

12 90. Under Health and Safety Code section 25249.7, subdivision (b), this Court has
13 authority to assess against defendant a maximum civil penalty of \$2,500 per day for each violation of
14 Proposition 65 that has occurred and continues to occur.

15 91. Under Health and Safety Code section 25249.7, subdivision (a) this Court is authorized
16 to enjoin defendant to comply with Proposition 65 now and at all times in the future.

17 **Third Cause of Action**

18 **(Violation 27 Cal. Code Regs., § 25602, subd. (b))**

19 92. Plaintiff realleges and incorporates each and every allegation contained in the
20 preceding paragraphs as though fully set forth herein.

21 93. Where a sign or label on a consumer product is in a language other than English, a
22 Proposition 65 warning must also be provided in that language in addition to English. (27 Cal. Code
23 Regs., § 25602, subd. (d).)

24 94. Defendant has violated and continues to violate 27 Cal. Code Regs., § 25602, subd. (b)
25 because defendant has never provided a Proposition 65 warning in the language used on the labels for
26 the PRODUCTS on www.amazon.com.

1 95. Under Health and Safety Code section 25249.7, subdivision (b), this Court has
2 authority to assess against defendant a maximum civil penalty of \$2,500 per day for each violation of
3 Proposition 65 that has occurred and continues to occur.

4 96. Under Health and Safety Code section 25249.7, subdivision (a) this Court is authorized
5 to enjoin defendant to comply with Proposition 65 now and at all times in the future.

6 **Prayer For Relief**

7 WHEREFORE, Plaintiff prays the Court:

8 A. Grant civil penalties pursuant to Health and Safety Code section 25249.7, subdivision
9 (b)(1) against AMAZON in the amount of up to \$2,500 per day for each violation;

10 B. Enter such injunctions or other orders as are necessary pursuant to Health and Safety
11 Code section 25249.7, subdivision (a) to prevent AMAZON from exposing persons within the state of
12 California to the developmental toxins mercury and mercury compounds caused by the reasonably
13 foreseeable use of the PRODUCTS without providing clear and reasonable warnings;

14 C. Award Plaintiff reasonable attorneys' fees and costs pursuant to Code of Civil
15 Procedure, section 1021.5 and as otherwise appropriate; and

16 D. Grant such other and further relief as may be just and proper.

17
18 Respectfully Submitted,

19 Dated: April 17, 2019

20 GREENFIRE LAW, PC


21 By: 
22 Rachel S. Doughty
23 Jessica L. Blome
24 Attorneys for Plaintiff
25 AS YOU SOW
26
27
28

Exhibit 1



**GREENFIRE
LAW, PC**

RACHEL S. DOUGHTY
2550 Ninth Street, Suite 204B
BERKELEY, CA 94710
PHONE/FAX: 510.900.9205
EMAIL: rdoughty@greenfirelaw.com
WWW.GREENFIRELAW.COM

November 21, 2018

Via Electronic and U.S. Mail

Amazon.com, Inc.
ATTN: Jeff Bezos, CEO
410 Terry Avenue N.
Seattle, WA 98109

Amazon.com, Inc.
ATTN: Jeff Bezos, CEO
1200 12th Avenue S.
Suite 1200
Seattle, WA 98144
prop-65-claim-notices@amazon.com

Re: 60-Day Notice of Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) & Demand for Supply Chain Identification

Dear Mr. Bezos:

This firm represents *As You Sow* in connection with this notice of violation of California's Safe Drinking Water and Toxic Enforcement Act ("Proposition 65"), codified at Health & Safety Code §25249.5 et seq. *As You Sow* is a 501(c)(3) non-profit corporation dedicated to, among other causes, the protection of the environment, toxics reduction, the promotion and improvement of human health, and the improvement of worker and consumer rights. *As You Sow* has, since 1992, been one of the leading enforcers of Proposition 65, bringing hundreds of manufacturers and whole industries into compliance as part of its work to promote corporate accountability, ensure safer consumer products, and create a sustainable marketplace that does not degrade the planet.

This Firm and *As You Sow* have documented violations of Proposition 65. This letter serves to provide this Firm's and *As You Sow*'s notification of these violations to you the violator. Pursuant to §25249.7(d) of the statute, this Firm intends to bring an enforcement action on behalf

of *As You Sow* sixty (60) days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

This letter constitutes notice to the addressee that it has violated and continues to violate provisions of Proposition 65 and its implementing regulations. Specifically, the Alleged Violator to which this letter is addressed -- Amazon.com, Inc. ("Violator") -- has violated and continues to violate the warning requirement at section 25249.6 of the California Health & Safety Code, which provides, "No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual[.]"

A summary of Proposition 65 and its implementing regulations, prepared by the Office of Environmental Health Hazard Assessment, the lead agency designated under Proposition 65, is enclosed with the copy of this notice served to the Violator. The specific details of the violations that are the subject of this Notice are provided below.

Description of Violations

The Violator has contravened the warning requirement of section 25249.6 of the California Health and Safety Code by manufacturing, producing, packaging, importing, supplying, distributing, selling, transferring, or otherwise providing the consumer products containing mercury listed below directly to consumers through the Violator's website without providing the clear and reasonable warnings required by Proposition 65 and its implementing regulations (including by failing to provide warnings in all languages required), dating at least as far back as 2014, and continuing each day through the present.

- **Time Period of Exposure:** The violations have been occurring since at least 2014 and are continuing to this day.
- **Provision of Proposition 65 Implicated:** This Notice of Violation covers the "warning provision" of Proposition 65, which is found at California Health and Safety Code, section 25249.6, and its implementing regulations.
- **Chemical Involved:** The listed chemical involved in this notice of violation is mercury and mercury compounds. This chemical is recognized by the State of California as a developmental toxin.
- **Types of Products:** The specific types of products causing the violations are skin-lightening, whitening, and "smoothing" creams containing mercury or mercury compounds, and specifically those listed below in Table 1.

Table 1

Product	Exemplars¹
Goree brand skin lightening and whitening creams	<p>Goree Day & Night Whitening Cream (ASIN B074DVQ78J)</p> <p>Goree Day And Night Cream Dark Circles, SPOTS PIMPLES REMOVING 30g x 1 (ASIN B01JGW2Q8Q)</p> <p>Goree 12 Box*30G : 30G, 12Box Day And Night Cream (ASIN B071F5W69M)</p> <p>12 Box*30G : Day And Night Cream 30G (ASIN B07286YNF6)</p> <p>Goree Day & Night Cream with Goree Cream Combo (ASIN B07FCGTVW1)</p>
Jiaoyan brand skin lightening and whitening creams	Jiaoyan Whitening Skin Care Set (ASIN B01MZDMSDJ)
Be Be brand skin lightening and whitening creams (including anti-freckle and blemish creams)	Be Be Special Cream Round-Yellow (Anti-Freckle, Blemish) (ASIN B075J67ZY9)
CCM brand skin lightening and whitening creams (including anti-freckle and blemish creams)	<p>CCM Perfect 365 Special White Cream (ASIN B00T41L3CU)</p> <p>CCM Anti Freckle & Blemish – Night Cream (ASIN B00P0QXX3A)</p>
Parley brand whitening creams	Parley Herbal Whitening Cream – 100% Natural (ASIN B019C5HKW4)
Polla brand skin lightening and whitening creams (including anti-melasma, acne, and dark spot creams)	<p>X2 PCS SET Polla Anti-melasma, Acne, Dark Spot, Whitening Day & Night Creams 5g (ASIN B0793CZQQZ)</p> <p>Polla Anti-Melasma, Acne, Dark Spot, Whitening Day and Night Cream (ASIN B00B9XBNJE)</p>
KIM brand skin lightening, whitening, and smoothing	Whitening Ginseng and Pearl Snow Lotus Latinal Smoother Face Cream [USA] (ASIN B00N526M70)

¹ The listed exemplars are provided to assist in identification only and are not exhaustive of possible name variations and Amazon Standard Identification Numbers (ASINs) under which the products are or may be listed on Amazon.com.

Product	Exemplars ¹
creams (including anti-wrinkle, anti-acne, anti-freckle and Latinal/Latina creams)	<p>KIM Whitening Ginseng Pearl & Snow Lotus Latinal Smoother Face Cream 20g (ASIN B00XW3XA36)</p> <p>Whitening Ginseng Pearl Snow Lotus Latinal Face Cream Anti Wrinkle Acne Freckle 20g (ASIN B00BQGURJG)</p> <p>Whitening Pearl + Aloe + Collagen + Snow Lotus Latinal Smoother Face Cream 20g. [USA] (ASIN B00CMJVZ3S)</p> <p>1 x Kim Herbal Whitening Turmeric and Snowlotus Herbal Anti-Wrinkle Cream 20g (ASIN B07GTJ78JJ)</p>
Chandni skin lightening and whitening creams	<p>Chandni Whitening Cream (ASIN B074MGFGMF)</p> <p>Chandni Whitening Cream Remove Acne, Wrinkles, Pimples, Dark Spot, Dark Circles (ASIN B072BCBZP3)</p> <p>CHANDNI BEAUTY CREAM 30g (ASIN B07FR916GS)</p> <p>Chandni Whitening Cream (ASIN B074T57XDV)</p>

- Description of Exposures:** This Notice addresses environmental and consumer product exposures to mercury and mercury compounds resulting from the acquisition, purchase, storage, consumption, or reasonably foreseeable use of creams used to lighten, whiten, or “smooth” skin, and their subsequent disposal. Mercury is an additive or active ingredient in such creams. Use and disposal of the items listed above, as well as other items of the same formula, results in human exposures to mercury. Mercury exposure occurs in three main routes: ingestion, inhalation, or dermal absorption. Ingestion may occur post-application due to insufficient hand washing prior to eating or preparing food. Inhalation may occur due to the significant amount of mercury vapor produced by use of these creams, which can affect all household members. Dermal absorption may occur because these products are designed and specifically marketed for direct contact with skin. These exposures occur throughout California in residences where the products are used and in locations in which the products are disposed. Pursuant to California Code of Regulations, title 27, section 25903, subdivision (b)(2)(F), with respect to environmental exposures, you are informed that the exposure for which a warning is required can occur beyond the property owned or controlled by Amazon.com.²

² See Lori Copan, Jeff Fowles, Tracy Barreau, and Nancy McGee, Mercury Toxicity and Contamination of Households from the Use of Skin Creams Adulterated with Mercurous Chloride (Calomel), Int. J.

Pursuant to California Code of Regulations, title 11, section 3100, a Certificate of Merit is attached.³

Resolution of Claims Being Noticed

Based on the allegations set forth in this Notice, the Noticing Party intends to file a citizen enforcement lawsuit against the Violator unless it agrees to remedy the violations set forth above. If the Violator is interested in resolving this dispute without resort to expensive and time-consuming litigation, please contact the Noticing Party through its counsel identified below.

Preservation of Relevant Evidence

This Notice also serves as a demand that the Violator preserve and maintain all relevant evidence, including all electronic documents and data, pending resolution of this matter. Such relevant evidence includes but is not limited to all documents relating to mercury released from or during the storage, shipment, transfer, distribution, and use of skin lightening creams; purchases, sales, and customer information for such products; communications with any person relating to actual or potential exposures to mercury from the use of such products; representative exemplars of each unit of any of the brands listed above in Table 1 sold since 2014; the content of internet displays, including text and photos or depictions, for the products causing the violations; and all communications regarding the alleged violations.

Parties

This Notice is provided on behalf of the following person and organization:

As You Sow
1611 Telegraph Ave
Suite 1450
Oakland, CA 94612
(216) 387-1609

The Noticing Parties can be contacted through counsel as identified below:

Rachel Doughty
Greenfire Law, PC
2550 Ninth Street, Ste. 204B
Berkeley, CA 94710
(510) 900-9502
rdoughty@greenfirelaw.com

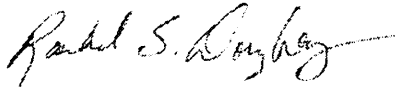
Environ. Res. Public Health 2015, 12(9), 10943-10954 (available at: <https://www.mdpi.com/1660-4601/12/9/10943>); California Department of Public Health, Mercury in Skin Cream Materials Fact Sheet (available at: <https://www.cdph.ca.gov/Programs/CCDCPHP/DEODC/EHIB/CPE/Pages/MercuryinSkinCreamMaterials.aspx#>); 21 C.F.R. § 700.13.

³ A second copy of the entire notice and Certificate of Merit is served on the Attorney General, clearly marked "Attorney General Copy: Contains Official Information Pursuant to Evidence Code Section 1040" with all supporting documentation required by Section 3102 attached thereto.

Demand for Supply Chain Contacts

Pursuant to California Code of Regulations title 27, article 6, section 25600.2, subdivision (g) you must promptly provide As You Sow (through its counsel) with the names and contact information for each of the manufacturers, producers, packagers, importers, suppliers, and distributors of each of the products listed above in column 1 of Table 1 (not just the exemplars).

Sincerely,



Rachel Doughty

cc: Attorney General (without Summary and with additional confidential information supporting Certificate of Merit)
District Attorneys and City Attorneys listed in Certificate of Service (without Summary)

Attachments:

- Certificate of Merit (without additional confidential information supporting Certificate of Merit to Attorney General only)
- Certificate of Service
- *The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary* ("Summary")